

Testimony
Senate Bill 2256 - Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman

January 26, 2021

Chairman Lee, and members of the Senate Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you in opposition of Senate Bill 2256.

Senate Bill 2256 instructs Legislative Management to identify changes that need to be made to the Department's Administrative Code and internal policies and protocols regarding section 1915(c) home and community-based services waiver for individuals with intellectual disabilities and developmental disabilities. The Department complies with the administrative rulemaking process outlined in chapter 28-32 of the North Dakota Century Code, receives a review from the Attorney General's Office as to the legality before final adoption, and the Department appears before the Administrative Rules Committee. The administrative rulemaking process requires the Department to provide notice, hold a public hearing, and consider comments on the rules. This statutory process allows anyone to participate in the Department's rulemaking process.

The legislative body has delegated the authority, pursuant to section 28-32-02 of the North Dakota Century Code, to an administrative agency to adopt rules. In addition, the Department has statutory authority to create rules as set forth in section 25-01.2-18 of the North Dakota Century Code. Section 28-32-02 of the North Dakota Century Code also sets forth that the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. The Administrative Rules Committee has the authority to object, void, or amend a rule following the process outlined in chapter 28-32 of the North Dakota Century Code. Senate Bill 2256 does not follow the process set forth in chapter 28-32 of the North Dakota Century Code regarding an agency's administrative rules.

In addition, an individual that has been denied or revoked a service or benefit has a right to appeal the Department's decision. The appeal is heard by the Office of Administrative Hearings and an administrative law judge issues a recommended findings and proposed order. If the individual still disagrees with the Department's decision, the individual can appeal the decision to the district court.

Finally, any changes to the administrative rules, policies, and protocols must comply with federal and state laws and regulations and the Department must have the appropriate appropriation for such changes.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.